



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving Termination of the Northern California Power Agency Natural Gas Procurement Program Third Phase Agreement and Authorizing the City Manager to Execute (EUD)

MEETING DATE: June 2, 2010

PREPARED BY: Interim Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution approving the termination of the Northern California Power Agency Natural Gas Procurement Program Third Phase Agreement and authorizing the City Manager to execute.

BACKGROUND INFORMATION: In 1991, Lodi entered into the Northern California Power Agency (NCPA) Natural Gas Procurement Program (NGPP) Third Phase Agreement, under which NCPA bought fuel and pipeline rights for Combustion Turbine Project 1 (CT1) and Combustion Turbine Project 2 (CT2). The agreement is outdated and largely ignored by participants. Over the years, problems with the agreement have arisen such as:

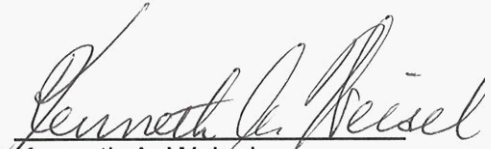
- No provision for forward purchases of gas by individual members to fix fuel costs and suit members' differing risk management practices;
- Requirement that the NCPA Commission approve purchases above \$15,000, which reflects 1991 gas prices and is too low in today's market;
- Turlock Irrigation District wishes to terminate its involvement in the NGPP Agreement;
- Palo Alto was deemed to terminate its participation in the NGPP Agreement in 1993 by adoption of an NCPA Commission resolution without formal amendment to the NGPP;
- The Natural Gas Information Program eliminated the need for portions of the Agreement.

To remedy these flaws and others, and to update gas procurement practices, NCPA proposes to terminate this agreement and replace it with two new Facilities Agreement (FA) schedules for CT1 and CT2 that are consistent with member agreements for electric purchases. This termination has no effect on Lodi Energy Center agreements. FA schedules require only NCPA Commission approval, as they cover issues that may need revision at times, for reasons such as a changing market or regulatory environment. The Facilities Committee recommends approval of these new FA Schedules.

The termination is contingent upon approval by the NCPA Commission of the new FA schedules.

FISCAL IMPACT: None.

FUNDING AVAILABLE: Not applicable


Kenneth A. Weisel
Interim Electric Utility Director

APPROVED: 
Konradt Bartlam, Interim City Manager

TERMINATION OF NATURAL GAS PROCUREMENT PROGRAM THIRD PHASE AGREEMENT

This Termination of Natural Gas Procurement Program Third Phase Agreement ("this Termination") is made and entered into as of this _____ day of _____, 2010 by and between the Northern California Power Agency, a California joint powers agency, and the Cities of Alameda, Lodi, Lompoc, Palo Alto, and Roseville and the Turlock Irrigation District (collectively, the "Parties") (the Parties other than NCPA are referred to herein as "the Participants"), and

WITNESSETH:

WHEREAS, on March 28, 1991, the Commission of the Northern California Power Agency ("the Commission") adopted its resolution no. 91-09, approving the Natural Gas Procurement Program Service Schedule ("the Service Schedule") authorizing NCPA to procure contract and other rights for the transportation, storage and supply of natural gas as fuel to the NCPA Combustion Turbine (CTI) Project, the Combined Cycle (STIG-CT2) Project (Unit One-Lodi and Unit Two- Ceres also known as Turlock), and for the needs of those NCPA members executing the Service Schedule; and

WHEREAS, the Service Schedule contemplated that it would be superseded by a "third phase agreement"; and

WHEREAS, on or about November 6, 1991 NCPA and the Participants entered into the Natural Gas Procurement Program Third Phase Agreement ("the Third Phase Agreement") as contemplated by the Service Schedule and which by its terms superseded the Service Schedule; and

WHEREAS, on or about September 15, 1993 the Commission adopted its resolution no. 93-16 which transferred the Natural Gas Procurement Program to the STIG-CT2 Project and additionally attached ~~Gas~~ Service Schedule A ("Schedule A") which is a service schedule related solely to the Turlock Irrigation District. Said resolution, copies of which were executed by NCPA and the Turlock Irrigation District, appears to have been intended as a contract. In addition, said resolution also appears to attempt to terminate the obligations of the City of Palo Alto under the Third Phase Agreement, and although an amendment to the Third Phase Agreement to that effect has not been approved, the Parties have since treated Palo Alto as not being a participant under the Third Phase Agreement; and

WHEREAS, NCPA is, concurrently with the approval of this Termination, approving new Schedules as attachments to its Facilities Agreement by which NCPA intends to procure contract and other rights for the transportation, storage and supply of natural gas as fuel to the CT1 and Unit One of STIG-CT2. The intention is that each NCPA Project requiring natural gas will have its own independent Facilities Agreement Schedule defining the terms by which the participants in the respective projects have determined to acquire natural gas; and

WHEREAS, the Facilities Agreement Schedules upon adoption will supersede the Third Phase Agreement and the Parties desire to formally terminate the Third Phase; and

WHEREAS, section 25 of the Third Phase Agreement provides that it may not be terminated without the consent of all Participants and NCPA and unless the means have been established to timely pay, extinguish, or discharge, without liability to NCPA or any Participant, all obligations entered into and liabilities incurred under the Third Phase Agreement; and

WHEREAS, this Termination includes the obligation of the Participants to pay for those net costs and liabilities incurred under the terms of the Third Phase Agreement, whether known or unknown, and the obligation of NCPA to pay Participants any funds owing under the terms of the Third Phase Agreement; and

WHEREAS, the new Schedules, to which the Cities of Alameda, Lodi, Lompoc and Roseville (but not the City of Palo Alto or the Turlock Irrigation District) will be subject as signatories to the Facilities Agreement, include ratification of pre-existing term gas pipeline agreements the term of which extends beyond the Effective date of this Termination and entered into by NCPA under the terms of the Third Phase Agreement. The Cities of Alameda, Lodi, Lompoc, and Roseville will be responsible for the on-going costs and obligations of those pipeline agreements under the terms of the Facilities Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. When this Termination takes effect in accordance with Section 6, NCPA shall immediately cease purchasing natural gas under the Third Phase Agreement or incurring new obligations under it, and shall immediately begin procurement of natural gas for the CT No. 1 Project and Unit One of the STIG-CT No. 2 Project utilizing the new Facilities Agreement Schedules.

2. Within sixty (60) days NCPA shall provide a closing statement to all Participants for all known costs or liabilities incurred pursuant to the Third Phase Agreement separately setting forth all credits and debits (which statement may be included in the monthly NCPA "All Resources Bill"), and which shall be paid by the Participants in accordance with the terms of the Third Phase Agreement. Should any Participant be entitled to payment of funds by NCPA, NCPA shall pay such funds within the same time period during which Participants would be required to pay NCPA. If and when any unknown costs or liabilities incurred pursuant to the Third Phase Agreement or pursuant to Resolution no. 93-16 arise, NCPA shall present such net costs to the Participants who shall pay such costs in accordance with the terms of the Third Phase Agreement or said resolution, respectively, and if any Participant is entitled to payment of any funds, NCPA shall pay such funds to such Participant at the same time as the Participant would be obligated to pay funds to NCPA..

The Parties agree that, in accordance with the intent expressed in Resolution no. 93-16, none of such costs or liabilities shall be allocated to Palo Alto, which shall be treated for purposes of this Termination as if the Third Phase Agreement had been amended to exclude that Participant in 1993.

The Cities of Alameda, Lodi, Lompoc and Roseville acknowledge that, upon approval of the new Facilities Agreement Schedules as contemplated by this Termination, existing gas pipeline agreements the term of which extends beyond the Effective Date of this Termination, shall be deemed to be ratified by the Cities of Alameda, Lodi, Lompoc, and Roseville and authorized by those new Facilities Agreement Schedules authorizing the NCPA Commission to periodically authorize contracts with third persons for transportation and storage services. The Cities of Alameda, Lodi, Lompoc and Roseville agree to pay costs arising out of the preexisting pipeline agreements under the terms of the Facilities Agreement.

3. The Third Phase Agreement is hereby terminated, and except for the obligations to pay outstanding costs and liabilities, net of any credit or debit adjustments, pursuant to section 2 of this Termination as well as any unknown net costs that arise subsequent to the closing statement, and the indemnity obligations of section 30 of the Third Phase Agreement which shall survive this Termination, all rights, obligations, and liabilities of the Parties to each other with respect to the Third Phase Agreement are extinguished and released.

4. This Termination may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original instrument and as if all signatories to all of the counterparts had signed the same instrument.

5. Each Participant executing this Termination warrants and represents that it has agreed to be bound by the terms of this Termination and that it has been executed after authorization and approval by its governing body.

6. This Termination shall take effect upon the later of (a) the adoption and effective date of the Facilities Agreement Schedules for gas purchases for the CT1 and Unit One of the STIG-CT2 project; (b) the effective date of such agreement or agreements by which TID makes alternative gas purchase, management and transportation arrangements replacing such services which it may have received directly or indirectly under the Third Phase Agreement or under Resolution no. 93-16; (c) the effective date of the permanent assignment to TID of its share of all pipeline rights which NCPA holds and to which TID is entitled to a 50% share on the pipeline systems of NOVA Gas Transmission Limited, Foothills Pipe Lines Ltd., Gas Transmission Northwest Corporation and Pacific Gas and Electric Co.; and (d) execution of this Termination by all Parties.

IN WITNESS WHEREOF the Parties by the signatures of their duly authorized representatives below have executed and delivered this Termination.

NORTHERN CALIFORNIA POWER AGENCY

Approved as to form:

By: _____
Its: General Manager

General Counsel

Date: _____

CITY OF ALAMEDA

By: _____

Date: _____

Approved as to form:

City Attorney

CITY OF LODI

By: _____
Konradt Bartlam
Its: Interim City Manager

Date: _____

Approved **as** to form:

D. Stephen Schwabauer
City Attorney 

Attest:

Randi Johl, City Clerk

CITY OF LOMPOC

By: _____
Its: _____

Date: _____

Approved **as** to form:

City Attorney

CITY OF PALO ALTO

By: _____
Its: _____

Date: _____

Approved as to form:

City Attorney

CITY OF ROSEVILLE

Date: _____

Approved as to form:

City Attorney

TURLOCK IRRIGATION DISTRICT

Its: _____

Date: _____

Approved as to form:

General Counsel

NCPA Facilities Agreement Schedule FA 9.01

Draft

A. Introduction

Combustion Turbine Project No. 1 ("CT No. 1") consumes natural gas as a fuel in order to generate electric energy for the benefit of the various Project Participants, and the CT No. 1 Third Phase Agreement specifically defines fuel resources to be included within the "Project". The Third Phase Agreement also directs NCPA to fix rates and charges to the Participants to cover fuel supply obligations for the Project, and directs NCPA to "do all things necessary and possible to deliver or cause to be delivered to or for the Project Participants in accordance with the respective Project Entitlement Percentages, the capacity and energy of the Project in accordance with the operating principles listed in Appendix B." Further, the CT No. 1 Third Phase Agreement is a Schedule to the Member Service Agreement which provides that NCPA shall deliver or cause to be delivered, to the point of delivery, the Members' respective participation share of capacity and energy subject to Service Schedules attached to the Member Service Agreement.

This Facilities Agreement Schedule FA 9.01 describes the terms under which NCPA will procure natural gas fuel for Combustion Turbine Project No. 1

B. Contracts, Restrictions and Approvals

NCPA will only procure natural gas fuel input for the CT No. 1 Project from eligible Third Parties under forms of contracts approved by the NCPA Commission. Gas supply contracts will be implemented in accordance with NCPA's Energy Risk Management Policy and Regulations as may be amended from time to time. In addition, at the direction of the NCPA's General Manager, or his designee, Project Participants may be called upon to approve the terms of a particular fuel transaction through the use of a member-executed confirmation.

C. Economic Dispatch and Daily Fuel Requirements

The CT No. 1 Project currently consists of 5 peaking generators, 2 of which are located in Alameda, 2 of which are located in Roseville, and 1 of which is located in Lodi. An agreement selling the Roseville units to the City of Roseville has been entered into and such sale will be effective in 2010. The capability of each generating unit is more fully described in Facilities Agreement Schedule FA 2.01, and unless called upon to insure reliability by the California Independent System Operator, or its successor organization, each generator is economically dispatched in accordance with the operating procedures detailed in Facilities Agreement Schedule FA 3.01 and applicable agreements between the participants. In either case the fuel supply requirements of the Project are met

though NCPA's contractual relationship with a supplier for index based gas delivery. The cost of gas procured for the Project will be passed through to the Project Participants in accordance with Facilities Agreement Schedule FA 1.01, this FA Schedule 9.01 and the applicable provisions of the Project Third Phase Agreement.

D. Forward Gas Purchases and Financial Hedges

In the normal course of business NCPA does not execute forward natural gas transactions for the potential fuel supply needs of the CT No. 1 Project due to the inherent uncertainty in forecasting fuel supply requirements for small peaking generators. No financial hedges for fuel supply costs associated with the CT No. 1 Project will be implemented pursuant to this Schedule.

NCPA will assist any Project Participant that desires to purchase natural gas in advance for anticipated Project fuel supply needs upon written request of a Participant provided that NCPA and the requesting Participant have executed an enabling agreement for such purposes.

E. Member-Supplied Fuel

NCPA's accounting systems are not currently designed to accommodate Member-supplied fuel for use in the CT No. 1 Project and therefore Member-supplied fuel is not permitted.

F. Fuel Transportation and Storage

Natural gas fuel consumed by the CT No. 1 Project must be transported to each generator site. To obtain necessary transportation rights and services NCPA Commission may periodically authorize contracts with third parties and/or authorize subscriptions for transportation and storage services under pipeline tariffs in accordance with Agency procurement policies and procedures.

NCPA Facilities Agreement Schedule FA 9.05

Draft

A. Introduction

Combustion Turbine Project No. 2 ("CT No. 2") consumes natural gas as a fuel to generate electric energy for the benefit of the various Project Participants, and the GT No. 2 Third Phase Agreement specifically defines fuel resources to be included within the "Project". The Third Phase Agreement also directs NCPA to fix rates and charges to the Participants to cover fuel supply obligations for the Project and directs that NCPA "will remain available to do all things necessary and practical to deliver or cause to be delivered to or for each Project Participant, such Project Participant's Project Participation Percentage, of the capacity of the Project and the energy related thereto" and that "NCPA shall operate the Project, or cause the Project to be operated in accordance with the principles contained in the Facilities Agreement, as the same may be amended and supplemented from time to time". Therefore, this Facilities Agreement Schedule FA 9.05 has been developed to describe the terms under which NCPA will procure natural gas fuel for CT No. 2.

B. Contracts, Restrictions and Approvals

NCPA will only procure natural gas fuel input for the CT No. 2 from eligible Third Parties under forms of contracts approved by the NCPA Commission. Executed gas supply contracts will be implemented in accordance with NCPA's Energy Risk Management Policy and Regulations as may be amended from time to time. In addition, at the direction of the NCPA's General Manager, or his designee, Project Participants may be called upon to approve the terms of a particular fuel transaction through the use of a member-executed confirmation.

C. Economic Dispatch and Daily Fuel Requirements

The CT No. 2 consists of one generator, the capability of which is more fully described in Facilities Agreement Schedule FA 2.05. Unless called upon by the California Independent System Operator, the CT No. 2 is economically dispatched in accordance with the operating procedures detailed in Facilities Agreement Schedule FA 3.05. In either case the fuel supply requirements of the Project are primarily met through NCPA's contractual relationship with a primary supplier under a gas management agreement and supplemented with NAESB agreements with various third Parties to encourage complete fuel supplies. The cost for gas procured for the Project will be passed through to the Project Participants in accordance with Facilities Agreement Schedule FA 1.05, this FA Schedule and the applicable provisions of the CT No. 2 Project Third Phase Agreement.

D. Forward Gas Purchases and Financial Hedges

NCPA is permitted to purchase natural gas fuel in advance of generation provided that the term of the purchase does not exceed one month and delivery would occur within the next calendar month following the transaction. Transactions of this timing and duration are functionally equivalent to Balance of Month Energy Transactions under the NCPA Pooling Agreement. For individual members contemplating longer term forward fuel purchases, NCPA will assist any CT No. 2 Project Participant that so desires upon written request of a Participant provided that NCPA and the requesting Participant have executed an enabling agreement for such purposes. No financial hedges for fuel supply costs associated with the CT No. 2 will be implemented pursuant to this Schedule.

E. Member-Supplied Fuel

NCPA's accounting systems are not currently designed to accommodate Member-supplied fuel for use in the CT No. 2 Project and therefore Member-supplied fuel is not permitted.

F. Fuel Transportation and Storage

Natural gas fuel consumed by the CT No. 2 Project must be transported to the generator site. To obtain necessary transportation rights and services the NCPA Commission may periodically authorize contracts with third parties and/or authorize subscriptions for transportation and storage services under pipeline tariffs in accordance with Agency procurement policies and procedures.

RESOLUTION NO. 2010-73

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING TERMINATION OF THE NORTHERN CALIFORNIA
POWER AGENCY NATURAL GAS PROCUREMENT PROGRAM THIRD
PHASE AGREEMENT AND AUTHORIZING EXECUTION OF THE
TERMINATION BY THE CITY MANAGER

WHEREAS, on or about November 6, 1991, the Northern California Power Agency (NCPA), Lodi, and certain other NCPA members entered into the Natural Gas Procurement Program (NGPP) Third Phase Agreement authorizing NCPA to contract for the transportation, storage, and supply of natural gas for the needs of Participants; and

WHEREAS, the NGPP Third Phase Agreement does not reflect current gas procurement practices, and the Parties desire to formally terminate the NGPP Third Phase Agreement; and

WHEREAS, concurrent with the termination of the NGPP Third Phase Agreement, NCPA will establish new Schedules as attachments to the NCPA Facilities Agreement to allow NCPA to secure needed fuel transportation, storage, and supply.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the termination of the NCPA Natural Gas Procurement Program Third Phase Agreement; and

BE IT FURTHER RESOLVED that the City Council authorizes the execution of the Termination of Natural Gas Procurement Program Third Phase Agreement by the City Manager, or his designee, in substantially the form presented with such revisions that are mutually agreeable to the parties that the City Manager or designee finds beneficial.

Dated: June 2, 2010

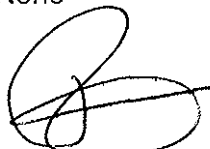
I hereby certify that Resolution No. 2010-73 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 2, 2010, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and
Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk